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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,658	08/19/2003	Joseph A. Pantelleria	16695.107548	5261

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EXAMINER

TRUONG, THANH K

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 05/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/643,658

Applicant(s)

PANTELLERIA ET AL.

Examiner

Thanh K. Truong

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. This action is in response to applicant's amendment received on February 16, 2006.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by MacEwen (4,432,473).

Regarding to claims 1, 7, 10 and 12, MacEwen discloses a method of bonding a plug (28) to an interior surface (42) of a cartridge body formed of a continuous loop sidewall (22), the cartridge body combining with the plug (28) and an end disk (26) spaced from the plug to form a dispenser cartridge (10) used to hold and dispense food sauce (78), a containment region for the dispenser cartridge defined between the plug and the end disk and bounded by the cartridge body, the method comprising the steps of:

positioning the plug having a body (44) with a terminal perimeter edge (32) within the cartridge body at an orientation such that the terminal perimeter edge is immediately adjacent to the interior surface of the cartridge body (figures 1-3 & 8 – column 5, lines 34-36); and

applying a layer of hot melt adhesive (57) to the terminal perimeter edge of the plug (column 6, lines 16-26, discloses that the layer of the thermoplastic material (56) that is applied to the inner surface (42) of the cartridge wall (22), and the layer of the thermoplastic material that is applied to the outer surface of the terminal perimeter edge (32) are melting and fusing together to form an adhesive layer (57) around the terminal perimeter edge of the plug, and the examiner construes that the melting and fusing of the thermoplastic material is read as applying a layer of hot melt adhesive – also figure 3) to seal the plug with the cartridge body interior surface and prevent food sauce disposed within the containment region from exiting the region by flowing around the terminal perimeter edge of the plug along the cartridge body interior surface (column 6, lines 37-39).

MacEwen further discloses:

Regarding to claim 2, wherein the cartridge body is generally cylindrical in shape and the step of positioning the plug comprises positioning the plug within the cartridge body at an orientation such that the terminal perimeter edge of the plug is generally concentric with the cartridge body interior surface (column 3, lines 32-40 – also figures 1, 3 & 8).

Regarding to claim 3, wherein the diameter of the plug defined at the terminal perimeter edge is approximately the same as the interior diameter of the cartridge body for a substantial circumferential distance around the cartridge body interior surface (column 5, lines 34-40 – also figures 1, 3 & 8).

Regarding claims 4 & 11, wherein interior surface of the cartridge body has a longitudinal sideseam (24) extending the length of the body to present a first interior diameter of the cartridge body measured from a first position immediately lateral of the sideseam and a second interior diameter of the cartridge body measured from a second position immediately lateral of the sideseam on a opposite side of the sideseam from the first interior diameter, the first interior diameter being larger than the second interior diameter (figure 7 shows the overlapped sideseam (24) in a cross sectional view) , and wherein the step of positioning the plug comprises positioning the plug within the cartridge body with a gap formed between the terminal perimeter edge of the plug and the interior surface of the cartridge body at the first position, and wherein the step of applying a layer of hot melt adhesive further comprises applying the adhesive to the terminal perimeter edge of the plug such that the adhesive covers the gap (*column 3, lines 64-66 and column 6, lines 37-39 disclose that the sealing formed between the plug and the inner surface of the tubular body providing a liquid-tight annular seal, and the examiner construes that the gap formed by the overlapped sideseam and the plug also being covered by the hot melt adhesive layer (57).*

Regarding to claims 5 and 8, wherein the hot melt adhesive is a thermoplastic food grade adhesive (*as discussed above, the hot melt adhesive is formed by melting the thermoplastic layers of the inner surface of the cartridge body and of the outer surface of the plug's terminal perimeter edge; wherein the thermoplastic layer is the food-grade material – column 5, lines 1-9).*

Regarding to claims 6 and 9, wherein the plug further comprises a peripheral skirt (30) extending generally perpendicularly from the body (44) and terminating at the perimeter edge (32), the terminal perimeter edge presenting a smooth interface surface to which the hot melt adhesive (57) is applied (figure 3).

Alternatively, claims 1-12 are rejected under 35 U.S.C. 103(a) as follow:

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacEwen (4,432,473).

As discussed above in paragraph 3 of this office action, MacEwen discloses the claimed invention, but does not expressly disclose the applying a layer of hot melt adhesive to the terminal perimeter edge of the plug.

However, MacEwen discloses the step of applying a layer of hot melt adhesive (66) to the periphery of the dispensing head (26) and the inner surface (42) of the tubular side wall (22) (column 6, lines 57-60 – also figures 1-3). The hot melt adhesive layer (66) provides a fluid-tight seal between the dispensing head and the tubular side wall (column 6, lines 60-63).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified MacEwen method by incorporating the applying of the hot melt adhesive layer to the terminal periphery edge of the plug and the cartridge body interior surface just as it (the hot melt adhesive) is being applied to dispensing head. To apply the hot melt adhesive to both ends of the cartridge would provide a simpler method to produce the cartridge, because the same mechanism would have been used for both ends instead of employing two different mechanisms to seal the ends to the body of the cartridge (one for the plug end portion and the other one for the dispensing end portion).

### ***Response to Arguments***

6. Applicant's arguments filed February 16, 2006 have been fully considered but they are not persuasive.

7. Regarding the 102 rejection, in response to Applicant's argument that MacEwen's method of sealing the plug and the cartridge body interior surface is not met the requirement of the present invention, because:

*"To the contrary, fusing results in a permanent bond whereas hot melt adhesives can be repeatably softened and melted by heat and hardened or set by cooling, allowing the removal or repositioning of parts during assembly. Thus, Applicant respectfully that MacEwan's melting and fusing of the thermoplastic material to the closure lip cannot be read as applying a layer of hot melt adhesive" (emphases added)(page 8, lines 4-8),*

Applicant misinterprets the principle that claims are interpreted in the light of the specification. Although these elements "repeatably softened", "hardened or set by cooling", "removal or repositioning" are found as examples or embodiments in the

specification, they were not claimed explicitly. Nor were the words that are used in the claims defined in the specification to require these limitations. A reading of the specification provides no evidence to indicate that these limitations must be imported into the claims to give meaning to disputed terms. *Constant v. Advanced Micro-Devices, Inc.*, 7 USPQ2d 1064.

8. Regarding the 103 rejection, in response to applicant's argument that there is no suggestion or motivation exists in the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner maintains that: MacEwen discloses the step of applying a layer of hot melt adhesive (66) to the periphery of the dispensing head (26) and the inner surface (42) of the tubular side wall (22) (column 6, lines 57-60 – also figures 1-3). The hot melt adhesive layer (66) provides a fluid-tight seal between the dispensing head and the tubular side wall (column 6, lines 60-63).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified MacEwen method by incorporating the applying of the hot melt adhesive layer to the terminal periphery edge of the plug and the cartridge body interior surface just as it is being applied to



dispensing head. Furthermore, to apply the hot melt adhesive to both ends of the cartridge would provide a simpler method to produce the cartridge, because the same mechanism would have been used for both ends instead of employing two different mechanisms to seal the ends to the body of the cartridge (one for the plug end portion and the other one for the dispensing end portion).

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

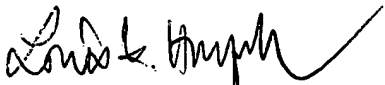
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K. Truong whose telephone number is 571-272-4472. The examiner can normally be reached on Mon-Thru 8:00AM - 6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tk  
May 7, 2006.

  
**LOUIS K. HUYNH**  
**PRIMARY EXAMINER**